

PLR 9451064, 1994 WL 709992 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: December 23, 1994

September 28, 1994

Section 351 -- Transfer to Corporation Controlled by Transferor
351.00-00 Transfer to Corporation Controlled by Transferor

Section 368 -- Definitions Relating to Corporate Reorganizations
368.00-00 Definitions Relating to Corporate Reorganizations
368.06-00 Change in Identity, etc.

Section 7701 -- Definitions
7701.00-00 Definitions
7701.01-00 Associations v. Corporations
7701.04-00 Domestic, Foreign Persons

CC: DOM:CORP:5 / TR-31-2112-94

Tribe = ***
Old P = ***
New P = ***
New Sub 1 = ***
Old Sub 2 = ***
New Sub 2 = ***
Old Sub 3 = ***
State A = ***
Business D = ***
Business E = ***
Business F = ***

Dear ***

This is in reply to a letter dated August 5, 1994, and subsequent letters containing additional information, in which a ruling was requested as to the federal income tax consequences of proposed transactions. The information submitted for consideration is substantially as set forth below.

Old P is an accrual basis corporation incorporated in State A. All the stock in Old P is held by Tribe, a federally recognized Indian tribe. Old P is engaged directly in Business E. In addition, Old P owns all the stock in Old Sub 2 and Old Sub 3.

Old Sub 2 is an accrual basis corporation incorporated in State A. Old Sub 2 is engaged in Business D.

Old Sub 3 is an accrual basis corporation chartered under the tribal corporate law of Tribe. Old Sub 3 is engaged in business F.

For valid business reasons, Old P desires that it and all of its subsidiaries be chartered under tribal corporate law and that it become a holding company for its various direct and indirect business operations. Accordingly, a new corporate structure will be created in which New P, New Sub 1, and New Sub 2 will be chartered under the tribal corporate law of Tribe. All the stock in New P will be held by Tribe. All the stock in New Sub 1 will initially be held by Old P. All the stock in New Sub 2 will be held by New P. Thereafter, the following steps will be taken:

Step I Old P will transfer Business E and any other operating assets and liabilities to New Sub 1 in exchange for all the stock in New Sub 1. Old P may retain a small amount of cash.

Step II A Tribe will transfer all the stock in Old P to New P.

Step II B New P will liquidate Old P and receive all the assets and liabilities of Old P.

Step III A New P will transfer all the stock of Old Sub 2 to New Sub 2.

Step III B New Sub 2 will liquidate Old Sub 2 and receive all the assets and liabilities of Old Sub 2.

Thus, following these steps, Tribe will own all the stock in New P which will own all the stock in New Sub 1, New Sub 2, and Old Sub 3.

With regard to the proposed transactions, the taxpayer makes the following representations (and has provided other supporting representations not included in this letter):

(a) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the transaction.

(b) Neither Old P nor New Sub 1 is presently, or is expected to be, in bankruptcy or under the jurisdiction of a court in a Title 11 or similar case (within the meaning of [§ 368\(a\)\(3\)\(A\) of the Internal Revenue Code](#)).

(c) Old P, New P, New Sub 1, Old Sub 2, New Sub 2, and Old Sub 3 each uses the accrual method of accounting.

(d) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the transactions described in Steps I, II, and III above have been fully disclosed. (e) Step I (in which Old P transfers assets to New Sub 1) will qualify as a transfer to a controlled corporation under § 351.

(f) Steps II A and II B (in which the Old P stock is transferred to New P and Old P is liquidated into New P) will together qualify as a reorganization under [§ 368\(a\)\(1\)\(F\)](#).

(g) Steps III A and III B (in which Old Sub 2 stock is transferred to New Sub 2 and Old Sub 2 is liquidated into New Sub 2) will together qualify as a reorganization under [§ 368\(a\)\(1\)\(F\)](#).

Representations (e), (f), and (g), above, are made based on taxpayer's assumption (i) that New Sub 1, New P, and New Sub 2 each constitute a corporation within the meaning of § 7701(a)(3) and (ii) that none of the transfers involved in Steps I, II, or III is subject to § 367.

Based solely on the information submitted and on the representations set forth above, we hold as follows:

(1) New P, New Sub 1, New Sub 2, and Old Sub 3, each of which will be chartered under the tribal corporate law of Tribe, will be classified as an association taxable as a corporation for federal income tax purposes.

(2) New P, New Sub 1, New Sub 2, and Old Sub 3 are "domestic" corporations within the meaning of [§ 7701\(a\)\(4\) of the Internal Revenue Code](#).

(3) Assuming that the transfer of assets from Old P to New Sub 1 in Step I qualifies as a transfer to a controlled corporation within the meaning of § 351, such qualification will not be affected by the fact that the stock of New Sub 1 is transferred from Old P to New P in Step IIB.

(4) Assuming that the transfer of Old P stock to New P and the liquidation of Old P into New P in Steps IIA and IIB qualifies as a reorganization under [§ 368\(a\)\(1\)\(F\)](#), such qualification as an "F" reorganization will not be affected by the fact that Old P is contemporaneously exchanging assets for New Sub 1 Stock in Step I. See [Rev. Rul. 79-250, 1979-2 C.B. 156](#), and [Rev. Rul. 69-516, 1969-2 C.B. 56](#).

We express no opinion about the qualification of any transfer as a transaction described in [§ 351](#) or [§ 368\(a\)\(1\)\(F\)](#). See sections 3.01(24) and (30) of [Rev. Proc. 94-3, 1994-1 I.R.B. 79, 81](#). We express no opinion about the tax treatment of the transactions under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings.

This ruling is directed only to the taxpayers who requested it. Section 6110(j)(3) provides

that it may not be used or cited as precedent.

Each affected taxpayer must attach a copy of this letter to its federal income tax return for the tax year in which the transaction covered by this ruling letter is consummated.

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By

David P. Madden
Chief, Branch 5

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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